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UNIFORM STATE LAWS¹

In 1787 a convention was held, the declared purpose of which was "to form a more perfect union, establish justice, insure domestic tranquillity * * * promote the general welfare, and secure the blessings of liberty to ourselves and our posterity," and to-day we are in convention, in the hope that we may contribute, be it ever so little, toward the promotion of the aims which induced the creation of the Union. We are met to aid in an undertaking which gives promise of great public usefulness and may prove helpful in maintaining in all its integrity the Union as formed.

Our ancestors were moved by the spirit of freedom aroused by the galling yoke the dominant country would fasten upon them. Many now are not a little moved by the gradual encroachments of the Federal government beyond the limits which were plainly set to it. Their belief is that because of State indifference to matters in respect to which each State is, and of right ought to be, independent of the Central government, and through want of concert of action on the part of the States, Congress has been tempted to invade that sphere, undertaking to prescribe what it conceives to be right or wise and to forbid what it conceives to be wrong or unwise, with such vindictory sanctions as it chooses to prescribe.

Action and reaction is the law of the universe, the ultimate effect of which, if wisely observed, is to purify the social, moral

¹ Address delivered by the Hon. Alton B. Parker upon being chosen President of a convention of delegates appointed by the Governors of the several States and various civic organizations, which was held at the Belasco Theater, Washington, D. C., on Monday, January 17th.

and political atmosphere. The extreme assertion of the doctrine of State rights reacted in the form of our great civil war, and now a reaction, let us hope, is beginning against one of its extreme consequences, namely, paternalism or centralization. So much was accomplished by the necessary centralization of power during that fratricidal struggle that we have all but unconsciously come to regard the central power as the panacea for all the evils of diverse State policies and laws. And so it may be accepted in the end, unless there be harmony in respect, at least, to the general principles of legislation in the several States and uniformity in respect to formal matters.

Looking backward to the beginning, is it to be doubted that the Fathers appreciated the history of the republics that have come and gone, when they sat down to construct a government? A government which, so far as might be, should meet the ideal of a government of the people, by the people and for the people? Can we hesitate to believe that they sought understandingly to avoid the rocks upon which preceding republics had drifted to their destruction? Certainly any student of the history of their time must answer in the affirmative, as he must also acknowledge their wisdom when he considers the smoothness of the working for more than a century of the governmental plan formulated by them.

The people wished local government and local courts. The history of their ancestors made them afraid of entrusting the protection and enforcement of their rights and liberties to jurors who were strangers and to officials independent of local public opinion. So they conferred upon the Federal government abundant power to maintain its dignity abroad, and for public defense, as well as power to regulate interstate commerce and affairs of national concern, but reserved by the very instrument creating the Federal government all power which they did not grant.

Now this precaution was a vital part of the scheme of the Fathers to protect their cherished rights and liberties from governmental tyranny. To the State government was granted every needed power for local self-government, but not all the powers possessed by a free people by any means. Many powers were and are distinctly reserved from the State government and maintained in the possession of the people themselves—powers that may or may not be later surrendered to either the Federal

or the State government as the people may will. The powers of the people, therefore, have been divided by them into three parts. The Federal government possesses one, the State government another, and the other remains in the people. An attempt by either the Federal government or the State to acquire by usurpation power withheld is an attempt to seize powers reserved by the people for the protection of precious rights and liberties, won only after centuries of effort. And there have been such attempts in both State and Nation, attempts participated in by both the executive and the legislative departments of government.

Many suggestions there have been of methods by which the citizen may be deprived of the protection of the Constitution and the law, but none more striking perhaps than the suggestion of the national executive at Jamestown, June 10, 1907, that a proposed congressional Employers Liability Law "should be such that it will be impossible for the railroad to successfully fight it without thereby forfeiting all right to the protection of the Federal government under any circumstances." In other words, the proposition is to so penalize the victim of congressional usurpation as will effectually prevent him from appealing to the judicial department of government for redress.

Mr. Bryce, in his *Essay on Obedience*, says:

"The greatest peril to self-government is at all times to be found in the want of zeal and energy among the citizens. This is a peril which exists in democracies as well as in despotisms. Submission is less frequently due to overwhelming force than to the apathy of those who find acquiescence easier than resistance."

It is only when some interest is attacked, and directly attacked, which is at the moment deemed of vital concern, that the people are aroused to defend their rights. Speaking to this proposition, Mr. Bryce in the same essay says:

"The English people were a people singularly attached to their ancient political and civil rights, yet Charles the First might probably have destroyed the liberties of England, and would almost certainly have destroyed those of Scotland, if he had left religion alone."

One danger, then, is lest, in the absence of direct attack upon any institution deemed of great importance by the public, our protective measures—which consist in the division of powers between the Federal government, the State government and the people, and the further division of the powers granted to the Federal and State governments, between the executive, the legis-

lative and the judicial departments of each—may in the meantime be insidiously weakened or obliterated.

The long strides that have been taken in this direction have apparently attracted but little public interest. This may be due in part to the reason assigned by Mr. Bryce, but in the main it is due to the belief that a remedy is needed, and the one proposed is accepted because suggested by one upon whose leadership the people for the time rely.

Latterly complaints have arisen of inefficiency resulting from the division of powers between the Federal and the State governments. It is said, depending upon the point of view, that some States grant charters which are far too broad, while others go to the opposite extreme; that in some States the law has not been enforced against disobedient corporations and their officers, while in others the tendency is to presume them guilty of a desire to violate all law, written or unwritten.

The public complaint for the present is more generally that the States have been lax in the enforcement of law, with most disastrous consequences. The charge of neglect must be admitted by all who appreciate that every one of the corporations now struggling for life was created in the face of the law under which they are now prosecuted,—a law which by reason of its deliberate non-enforcement was assumed by the corporation founders to be “more honored in the breach than in the observance.”

This is not the time to consider whether the one government or the other is the more responsible for this condition. For the claim is that in any event efficiency is sacrificed in the dual form of government, and that in the interest of business prosperity efficiency is of greater importance than all else.

This brings us to a consideration of the purpose of government. What is the object of government? Is it itself the end and aim of its existence? If so, then efficiency is the only criterion. To efficiency all must be sacrificed. There must be, in the language of mechanics, as well no friction as no lost motion anywhere in the governmental machine. A despotism more nearly approaches that standard than any other form of government, for it excels in mere efficiency of administration.

There is no political government on earth so efficient as the government of the United States Steel Corporation from a purely business standpoint. Every step it takes is in obedience to a

master mind. Everyone connected with it must subordinate his ambitions and plans to that of the master. In times of business depression he must learn to live more prudently that loss of surplus capital may not affect the efficiency of the corporation. But it may safely be said that no one would be willing to have our government thus managed, however much national wealth might be augmented each year.

We are ambitious, it is true, for wealth and the comfort it brings, but we have not yet lost our faith in the proposition that the object of government is the greatest good to the greatest number. It is desirable therefore now, as it was in the beginning, that we should endure a less efficient form of government in order to avoid the greater evils which would otherwise arise.

But that is not to say that we should not bend our energies to make our dual government as efficient as may be. On the contrary, those who revere the wisdom of the Fathers should be most diligent in such effort, to the end that we may surely continue to enjoy the blessings of liberty as well as the advantages of prosperity.

If it be asked what necessary relation has efficiency of government with the perpetuation of the present form of it, the answer is that the charge of inefficiency is put forward to justify invasion by the Central government of home rule powers of the States. And such invasion has been apparently welcomed, rather than resisted, when it has related either to matters in which uniform legislation would the better subserve the common welfare, or to official neglect to enforce the law.

Indeed, it has been said by one of our leading statesmen that

"There is but one way in which the States of the Union can maintain their authority and power under the conditions which are now before us, and that is by an awakening on the part of the States to a realization of their own duties to the country at large."

We are in full accord with this admonition to the States of the value and importance, and, therefore, of the duty of reasonable co-operation. As one great family of sovereign States we ought always to work unselfishly together for the general good.

Animated by that spirit, the legal profession representing every State gave birth to what may now be called an institution of our country, the Commissioners on Uniform State Laws. That commission was conceived by lawyers and brought forth by the American Bar Association. The conception was one of patriot-

ism, of a genuine love of country,—a desire, absolutely free of selfish notions, to simplify the problem of life, to discourage legal strife and make smoother to the lawyer the pathway of usefulness.

One of the objects of that association, stated in its constitution, is "to advance uniformity of legislation." One of the first reports to that association, made in 1879, the year following its creation, recommended co-operation to secure uniformity.

A Committee on Uniform State Laws was appointed in 1889, consisting of one member from each State. Subsequently it was decided to ask each State to appoint three persons to represent it in the Commissioners on Uniform Laws. The meeting of the Commissioners was held in Detroit in 1895, at which the first step was taken toward formulating what is now known as the Negotiable Instruments Law, which already adorns the statute books of thirty-six States, two territories and the District of Columbia.

If time would permit, I would like to speak of the faithful and efficient service rendered by the Commissioners without other reward than the sense of duty performed. Their work covers other bills now ready for adoption, one of which has already met the approval of ten State Legislatures. Let me cite the action taken in preparing the Uniform Sales Act as an illustration merely of the method employed by the Commissioners in all their work. They secured the services of Professor Williston of Harvard to draft the bill. This draft was then considered in conference, section by section, the author taking part. This draft, with explanatory notes and citations of leading cases, was printed and sent throughout the country to legal authors, jurists, professors in law schools, judges, leading lawyers, heads of business associations, and others, for criticism. Later final action was taken on the completed draft by a roll call of the States, each State casting one vote, resulting in unanimous approval. After all of which it was approved by the American Bar Association, which has each year for a long time back contributed liberally of its funds to defray expense of drafting, printing and distribution.

During twenty years members of the bar known for their attainment, their large and varied experience and high character, have given freely and cheerfully their energies and the best results of their study, observation and patiently acquired knowledge

to the end of simplifying and making common throughout the States of the Union the rules of law that should obtain for the best interests of all in the more important relations, such as are, or should be, independent of local conditions; so that the lawyer in Maine may safely advise his client of how he may deal in matters having their consummation in Georgia, whether it concern a bill of exchange, a bill of lading, a conveyance of realty, a will, the formation of a corporation, transaction in stocks, or investment or transaction of whatever kind; and this without other compensation than the satisfaction of serving their country. They have not accomplished all these things. One of the most marked characteristics of their labor has been the slowness with which they have made haste, if I may so speak. They have demonstrated that the plan is feasible, as well as wise, and, therefore, worthy of the support which this convention can give.

We do not aim at absolute uniformity of law throughout the States, but a wise and conservative uniformity. There is danger in pressing uniformity to extreme lengths. There are diversities of climate, of production, of tradition, of heredity, of population, of pursuits among the people of our several commonwealths which should be generally respected.

Uniformity should be promoted along the lines marked out by the Commissioners on Uniform Laws, and as much further as the diversities to which I have referred will reasonably permit. Other matters there are which it is most desirable should be the subject of uniform legislation, and some of them will be brought to your attention. Let me refer to one in closing as an illustration.

A movement has recently been inaugurated to make each industry bear the burden of accident to employees, without regard to the question of negligence, upon the ground that such burden is properly a part of the cost of the product. It has been accepted as founded on sound business principles, and put in operation by some employers already who recognize that otherwise great unfairness often results in casting upon the employee and his family the entire burden of accident. Legislation in England and Germany thus provides for the compensation to be paid to injured employees. The English statute provides for compensation during disability, equal to fifty per cent of the wage rate, and in case of death or total disability, a sum equal to four years' wages. Surely this country ought not to lag behind those enlightened

nations in righting what is now the most monstrous injustice of the age. Nevertheless that is likely to happen unless there be uniform legislation in many, if not all, the States on the subject. For in the absence of a general movement for uniform legislation, New Jersey, for instance, would hesitate to place her contractors at a disadvantage in competing with New York contractors.

From this convention now assembled representing, not one or many, but all the civic interests of each and all of the States, there should go out an authoritative expression in favor of uniform legislation in so far as it is conducive to the common weal. Let us strive to promote unity in diversity—unity in all that touches in like manner the internal affairs of the communities separated by State lines—diversity in those particulars which are peculiar to each commonwealth.

Alton B. Parker.